

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

556N0047

SENATE BILL NO. 151

Introduced by: Senators Napoli, Apa, Hanson (Gary), Jerstad, Katus, Kloucek, and Koetzle
and Representatives Van Norman, Boomgarden, Lucas, Moore, and Rhoden

1 FOR AN ACT ENTITLED, An Act to provide for additional compensation awards to workers'
2 compensation claimants due to unconscionable acts of the insurer or employer, to provide
3 an award in addition to and, which is not intended to replace existing penalties, and to
4 provide for administrative action against workers' compensation insurers under certain
5 circumstances.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Upon reasonable notice and hearing and opportunity to be heard, the department, an
10 administrative law judge, or upon appeal, the circuit court, or the Supreme Court, may award
11 compensation, in addition to the total amount of compensation award, of up to thirty percent of
12 that total amount if an insurer or employer has:

13 (1) Instituted a proceeding or interposed a defense which does not present a real
14 controversy but which is frivolous or for the purpose of delay;

15 (2) Unreasonably or vexatiously delayed payment;



- 1 (3) Neglected or refused to pay compensation;
- 2 (4) Intentionally underpaid compensation;
- 3 (5) Frivolously denied a claim; or
- 4 (6) Unreasonably or vexatiously discontinued or refused to pay compensation without
- 5 providing a reasonable and supportive basis of such determination.

6 Section 2. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 For the purposes of this Act, the term, frivolous, means without a good faith investigation
9 of the facts or on a basis that is clearly contrary to fact or law.

10 Section 3. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 To determine whether an employer or insurer is liable for the compensation award provided
13 for in section 1 of this Act, the division, the department, an administrative law judge, or the
14 circuit court may, upon appeal, examine the books and records of the employer and insurer
15 relating to the payment of compensation, and may require the employer or insurer to furnish any
16 other information relating to the payment of the claim for compensation.

17 Section 4. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 If an insurer or employer persists in an action or omission proscribed in section 1 of this Act,
20 or does not permit the examination of books and records, or fails to furnish information as
21 required, the secretary or the director shall file a written complaint with the Department of
22 Revenue and Regulation. The complaint shall specify the facts and recommend the revocation
23 of the license of the insurer to do business in this state. The claimant, or its representative, or
24 the circuit court may also file a written complaint.

1 Section 5. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Upon receipt of a complaint filed under section 4 of this Act, the Department of Revenue
4 and Regulation shall hear and determine the matter in the manner provided by chapter 58. On
5 finding that a charge made by the complaint is true, the Department of Revenue and Regulation
6 shall suspend or revoke the license of the insurer to do business in this state. The insurer or
7 employer may appeal from the action of the Department of Revenue and Regulation revoking
8 the license in the manner provided in chapter 58.

9 Section 6. That chapter 62-6 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 If an insurer or employer is guilty of inexcusable delay in making payments, the payments
12 which are found to be delayed shall be increased by twenty-five percent. Withholding amounts
13 that are due because the injured claimant refuses to execute a release of the claimant's right to
14 claim further benefits shall be regarded as inexcusable delay in the making of compensation
15 payments. If any sum ordered by the department to be paid is not paid when due, and no appeal
16 of the order is made, or no stay is granted, the sum shall bear interest at the rate of category C
17 pursuant to § 54-3-16.